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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/506,969	09/08/2004	Jeroen Karel Verbrugge	13877/13501	6946
26646 7590 07/30/2008 KENYON & KENYON LLP ONE BROADWAY NEW YORK, NY 10004				
EXAMINER HICKS, ROBERT J				
ART UNIT		PAPER NUMBER		
3781				
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07/30/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/506,969

Applicant(s)

VERBRUGGE ET AL.

Examiner

ROBERT J. HICKS

Art Unit

3781

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 June 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 4-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 4-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 September 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/S508)
- Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on June 30, 2008 has been entered.
2. The amendment filed on June 30, 2008 under 37 CFR 1.114 has been entered. The examiner acknowledges the amendments to the abstract and the claims. Claims 2-3 have been cancelled, as per the applicant's amendment.
3. Because of the applicant's amendment, the original objections to the abstract, and the claim rejections for claims 1 and 4-24 under 35 U.S.C. 112 2nd Paragraph, in the office action dated October 30, 2007, are hereby withdrawn.

Specification

Arrangement of the Specification

4. The disclosure is objected to because of the following informalities. The disclosure is missing section headings for the following [see 37 CFR 1.77(b)]:
 - (f) BACKGROUND OF THE INVENTION.
 - (1) Field of the Invention.
 - (2) Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98.
 - (g) BRIEF SUMMARY OF THE INVENTION.
 - (h) BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S).
 - (i) DETAILED DESCRIPTION OF THE INVENTION.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

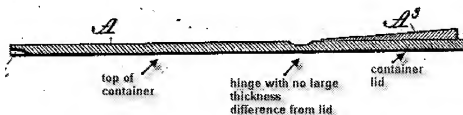
7. **Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Stern et al. (USPN 6,102,235) [hereinafter Stern] in view of Luburic (Canadian Patent Application No. 2,379,436) and further in view of Welander (USPN 557,461).**

Regarding Amended Claim 24, the patent to Stern – a lid with integral roller tray – discloses a lid (1) which is intended to be connected (7, Figs. 12, 13a-b, Col. 5 Lines 10-12) to the open side (around 9) of a container (13) for a substance that is applicable by a roller (19), said lid comprising: a first covering part (21) and a second covering part (3); the first covering part being provided on the underside with a region with a substance-distributing profile (31), and it being possible for the first covering part to be pivoted open about a hinge (87), which is located between the first covering part and the second covering part (Fig. 10), in such a manner that, to use the substance-

distributing profile, the first covering part can be positioned at an angle (Fig. 4) with respect to the second covering part, which remains connected to the container (Fig. 1), said lid being characterized in that the hinge between the first covering part and the second covering part being integrally moulded as part of the lid (Fig. 10), transversely over the entire lid (Fig. 9). *Webster's Third International Dictionary* defines the term "integral" as "formed as a unit with another part (as the main part)" or "composed of constituent parts making a whole". The hinge appears to be integral as molded with the lid.

Stern does not expressly disclose that the lid is formed integrally from plastic by injection moulding, or that the hinge is leak tight with respect to the substance; however, the publication to Luburic – a container with lid – discloses that the lid (**Luburic**, 30) with a hinge (**Luburic**, 31) and a container (**Luburic**, 10) that are "...fabricated by injection molding ... preferably to provide a suitably strong, lightweight, liquid-tight assembly" (**Luburic**, Page 5 Lines 19-21). The hinge appears to be part of the lid, and it would appear that the cover and hinge both have leak-tight qualities. It would have been obvious at the time of the invention to one of ordinary skill, using the teaching, suggestion, and motivation within the prior art, to manufacture the lid on the Stern paint roller tray out using an injection molding process, and to make the hinge leak tight, as suggested by Luburic, "to provide a liquid-tight seal between a container having an upper edge defining an opening, and an injection-molded lid configured to cover the opening." (**Luburic**, Page 1 Lines 18-20).

The Stern and Luburic combination does not expressly disclose that the hinge is molded on the lid such that large local thickness changes in the lid are avoided at said hinge; however, the patent to Welander – a box with a cover and hinge – discloses a container (**Welander**, A) with a cover (**Welander**, A') and a hinge (**Welander**, Fig. 2) in which there appears to not be a large thickness change from the lid to the hinge. It would have been obvious at the time of the invention to one of ordinary skill, using the teaching, suggestion, and motivation within the prior art, to modify the thickness of the hinge in the Stern and Luburic combination container to have approximately the same thickness of the lid, as suggested by Welander, "to provide, practically, a spring-hinge," (**Welander**, Line 20) and so "When the lid is disengaged from the body portion, the flexible joint will act to throw the same back" (**Welander**, Lines 56-58).



8. Claims 1 and 4-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stern in view of Luburic in view of Welander and further in view of Rich (USPN 3,412,890).
9. Regarding Amended Claim 1, Stern discloses packaging (Fig. 1) for a substance (Col. 5 Lines 13-17) which is applied to a base using a roller (19), which packaging comprises: a container (13) for the substance having an open top side (around 9), and a lid (1) connected to the top side of the container by coupling means (7, Figs. 12 and

13a-b, Col. 5 Lines 10-12), which lid comprises: a first covering part (21) and a second covering part (3); the first covering part being provided on the underside with a region with a substance-distributing profile (31), and it being possible for the first covering part to be pivoted open about a hinge (87), which is located between the first covering part and the second covering part (Fig. 10), in such a manner that, to use the substance-distributing profile, the first covering part can be positioned at an angle (Fig. 4) with respect to the second covering part, which remains connected to the container (Fig. 1), and the hinge between the first covering part and the second covering part being integrally moulded as part of the lid (Fig. 10) – as stated in Paragraph 7 of this office action – and extending transversely over the entire lid (Fig. 9); and the top side (9) of the container (13) has an outer edge (117) and adjoins the lid (1) in a manner to form a seal (**Stern**, Figs. 12 and 13a-b, Col. 5 Lines 10-12)

Stern does not expressly disclose that lid is formed integrally from plastic by injection moulding, or that the hinge is leak tight with respect to the substance; however, the publication to Luburic discloses that the lid (**Luburic**, 30) with a hinge (**Luburic**, 31) and a container (**Luburic**, 10) that are "...fabricated by injection molding ... preferably to provide a suitably strong, lightweight, liquid-tight assembly" (**Luburic**, Page 5 Lines 19-21) - as stated in Paragraph 7 of this office action. It would have been obvious at the time of the invention to one of ordinary skill, using the teaching, suggestion, and motivation within the prior art, to manufacture the lid on the Stern paint roller tray out using an injection molding process, and to make the hinge leak tight, as suggested by Luburic, "to provide a liquid-tight seal between a container having an upper edge

defining an opening, and an injection-molded lid configured to cover the opening."

(**Luburic**, Page 1 Lines 18-20).

The Stern and Luburic combination does not expressly disclose that the hinge is molded on the lid such that large local thickness changes in the lid are avoided at said hinge; however, the patent to Welander discloses a container (**Welander**, A) with a cover (**Welander**, A') and a hinge (**Welander**, Fig. 2) in which there appears to not be a large thickness change from the lid to the hinge – as stated in Paragraph 7 of this office action. It would have been obvious at the time of the invention to one of ordinary skill, using the teaching, suggestion, and motivation within the prior art, to modify the thickness of the hinge in the Stern and Luburic combination container to have approximately the same thickness of the lid, as suggested by Welander, "to provide, practically, a spring-hinge," (**Welander**, Line 20) and so "When the lid is disengaged from the body portion, the flexible joint will act to throw the same back" (**Welander**, Lines 56-58).

The Stern, Luburic, and Welander combination does not expressly disclose projections at the location where the hinge ends at the end of the container; however, the patent to Rich – a hinged container closure – teaches a hinge (**Rich**, 29) with projections (**Rich**, 34, 35) at the ends of the container lid (**Rich**, Fig. 6, Col. 2 Lines 60-63). It would have been obvious at the time of the invention to one of ordinary skill, using the teaching, suggestion, and motivation within the prior art, to add the webs at the hinge ends of the Stern and Luburic combination lid, as suggested by Rich, "to tear

Art Unit: 3781

partially or completely under the force applied to swing the flap 14 upwardly." (**Rich**, Col. 2 Lines 61-63).

10. Regarding Claim 4, Stern in view of Luburic in view of Welander in view of Rich discloses all the limitations substantially as claimed, as applied to amended claim 1 above; further, Stern teaches the first covering part (**Stern**, 21) has a protective rim (**Stern**, 25) which protective rim is located on the underside of the first covering part and extends around the region with the substance-distributing profile, with the exception of the side on which the hinge (**Stern**, 87) is located (**Stern**, Fig. 1).

11. Regarding Claim 5, Stern in view of Luburic in view of Welander in view of Rich discloses all the limitations substantially as claimed, as applied to claim 4 above; further, Stern teaches the protective rim (**Stern**, 25) is substantially U-shaped in cross section, preferably substantially at right angles with respect to the plane of the lid, with the open side facing towards the first covering part, while the first covering part is interrupted over the width of the protective rim (**Stern**, Fig. 1).

12. Regarding Claims 6-7, Stern in view of Luburic in view of Welander in view of Rich discloses all the limitations substantially as claimed, as applied to amended claim 1 and claim 4 above, respectfully; further, Stern teaches the protective rim (**Stern**, 25) is designed and arranged in such a manner that this protective rim interacts with parts of the side walls of the container which bear against the outside of the protective rim, in order to form a seal (**Stern**, Col 5 Lines 44-46). The design of the bottom of the protective rim protrudes down into the opening of the lid, and can form a seal with the container.

13. Regarding Claim 8, Stern in view of Luburic in view of Welander in view of Rich discloses all the limitations substantially as claimed, as applied to amended claim 1 above; further, Stern teaches in the lid there are ribs (**Stern**, 35) for increasing stiffness of the packaging or parts of the packaging.

14. Regarding Claim 9, Stern in view of Luburic in view of Welander in view of Rich discloses all the limitations substantially as claimed, as applied to amended claim 1 above; further, Luburic teaches the coupling means for the second covering part (**Luburic**, 32) is designed as a integral locking rim (**Luburic**, 33), which during use of the packaging, retains the connection between the second covering part and the container. If the tear strip is not used on the package, the tear strip can be described as a locking rim.

15. Regarding Claim 10, Stern in view of Luburic in view of Welander in view of Rich discloses all the limitations substantially as claimed, as applied to amended claim 1 above; further, Stern teaches the coupling means for the first covering part (**Stern**, 103) is designed for easily releasable coupling and is provided with a seal, which can be broken prior to first use. The examiner interprets the connection of the coupling means (**Stern**, 103) and the tabs (**Stern**, 111) as a seal that can be easily broken.

16. Regarding Claim 11, Stern in view of Luburic in view of Welander in view of Rich discloses all the limitations substantially as claimed, as applied to claim 9 above; further, Stern teaches the coupling means (**Stern**, 7) are designed to form a click-fit connection to the container (**Stern**, Fig. 13b, Col. 7 Lines 62-65). When the outer wall

(**Stern**, 125) is flexed outward to allow the bead (**Stern**, 117) to enter, upon entry the outside wall will fold inward or snap back into place, thus forming the seal.

17. Regarding Claim 12, Stern in view of Luburic in view of Welander in view of Rich discloses all the limitations substantially as claimed, as applied to amended claim 1 above; further, Stern teaches that the container (**Stern**, 13, Fig. 15) and the lid (**Stern**, 1, Fig. 1) are substantially rectangular in shape.

18. Regarding Claim 14, Stern in view of Luburic in view of Welander in view of Rich discloses all the limitations substantially as claimed, as applied to amended claim 1 above; further, Luburic teaches the dimension of the first covering part (**Luburic**, 34) in the plane of the lid (**Luburic**, 30), perpendicular to the hinge, is approximately three times as great as the dimension of the second covering part (**Luburic**, 32) in the plane of the lid (**Luburic**, Fig. 1).

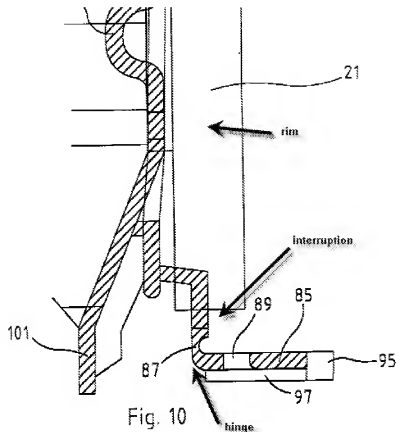
Stern in view of Luburic in view of Welander in view of Rich discloses the claimed invention except for the length of the first covering part being approximately three times the length of the second covering part. It would have been an obvious matter of design choice to modify the length of the first covering part to three times the length of the second covering part, since applicant has not disclosed that the dimension of the covering parts solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with the first covering part being three times the length of the second covering part.

19. Regarding Claim 15, Stern in view of Luburic in view of Welander in view of Rich discloses all the limitations substantially as claimed, as applied to amended claim 1

above; further, Stern teaches the opening in the container (**Stern**, around 9) which is opened up after the first covering part (**Stern**, 21) has been pivoted open is sufficiently large for a standard roller (**Stern**, 19) for applying a substance to a base to be able to fit through it easily.

20. Regarding Claim 16, Stern in view of Luburic in view of Welander in view of Rich discloses all the limitations substantially as claimed, as applied to amended claim 1 above; further, Stern teaches the lid (**Stern**, 1) has a projecting rim (**Stern**, 23) on the top side.

21. Regarding Claim 17, Stern in view of Luburic in view of Welander in view of Rich discloses all the limitations substantially as claimed, as applied to claim 16 above; further, Stern teaches the projecting rim (**Stern**, 23) extends along the entire periphery of the lid, and is interrupted at the location of the hinge (**Stern**, 87, Fig. 10).



22. Regarding Claim 18, Stern in view of Luburic in view of Welander in view of Rich discloses all the limitations substantially as claimed, as applied to claim 16 above; further, Stern teaches the base of the container (**Stern, 13**) has a space for receiving the projecting rim (**Stern, Fig. 15**).

23. Regarding Claim 19, Stern in view of Luburic in view of Welander in view of Rich discloses all the limitations substantially as claimed, as applied to claim 16 above; further, Stern teaches the projecting rim (**Stern, 23**) is designed as a locating rim, which acts in combination with the space in the base of the container (**Stern, 13**).

24. Regarding Claim 20, Stern in view of Luburic in view of Welander in view of Rich discloses all the limitations substantially as claimed, as applied to amended claim 1

above; further, Stern teaches the supporting of the first covering part at an angle (**Stern**, Fig. 4) with respect to the second covering part is realized by supporting elements (**Stern**, 55 and 59) which are integrated with the first covering part and the second covering part, respectively.

25. Regarding Claim 21, Stern in view of Luburic in view of Welander in view of Rich discloses all the limitations substantially as claimed, as applied to claim 20 above; further, Luburic teaches the projecting rim (**Luburic**, 33) on the second covering part (**Luburic**, 32) forms a supporting element.

26. Regarding Claim 22, Stern in view of Luburic in view of Welander in view of Rich discloses all the limitations substantially as claimed, as applied to claim 20 above; further, Stern teaches the lid (**Stern**, 1) comprises at least one connecting member (**Stern**, 47) which is responsible for fixing the first covering part at an angle (**Stern**, Fig. 4) with respect to the second covering part.

27. Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Stern in view of Luburic in view of Welander in view of Rich as applied to amended claim 1 above, and further in view of Lallement et al. (USPGP 2001/0013518) [hereinafter Lallement].

Stern in view of Luburic in view of Welander in view of Rich discloses all the limitations substantially as claimed, as applied to amended claim 1 above. Although Stern teaches the substance-distributing profile is formed by ribs (**Stern**, 35), which project downwards out of the plane of the lid and that recesses are formed in the lid, the Stern, Luburic, Welander, and Rich combination does not expressly teach the recesses

formed on the top side of the lid. However, the publication to Lallement – a paint tray with roller means – teaches a tray (**Lallement, 100**) with a first half (**Lallement, 11**) “...[with] rounded indentations projecting alternately upwards and downwards ...” (**Lallement, Fig. 3, Paragraph 41 Lines 4-5**). It would have been obvious at the time of the invention to one of ordinary skill, using the teaching, suggestion, and motivation within the prior art, to modify the top of the lid on the Stern, Luburic, Welander, and Rich combination with the alternating rounded indentations, as suggested by Lallement, for assistance in “spreading paint effectively in uniform manner over the roller” (**Lallement, Paragraph 41 Lines 2-3**).

Response to Arguments

28. Applicant's arguments, see Remarks Page 10 Lines 27-29, and Page 11 Lines 23-25, filed June 30, 2008, with respect to the rejection(s) of claim(s) 1 and 24 under 103(a) as obvious over Stern in view of Luburic, have been fully considered and are persuasive. Therefore, the rejections have been withdrawn. However, upon further consideration of the claims as amended by the applicant, new ground(s) of rejection is made in view of being unpatentable under 103(a) as obvious over the following: Claim 1 over Stern in view of Luburic in view of Welander in view of Rich, and Claim 24 over Stern in view of Luburic in view of Welander.

29. In response to applicant's argument that Stern does not teach about the interface of the lid and container [**Remarks, Page 10 Lines 15-18**], Stern clearly discloses the connection between the lid (**Stern, 1**) and the container (**Stern, 13**) at the container

interface (**Stern**, around 9) with attachment means (**Stern**, 7, Figs. 12 and 13a—b, Col. 5 Lines 10-12).

30. In response to applicant's argument that the Luburic reference fail to show a leak-tight hinge line [**Remarks**, Page 11 Lines 13-15], it is noted that the features upon which applicant relies (i.e., "...there is no teaching or suggestion that the hingeline (29) of Luburic would remain liquid-tight when subjected to the stress of a roller thereon") are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Conclusion

31. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: see PTO-892 Notice of References Cited for prior art considered relevant to this application.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ROBERT J. HICKS whose telephone number is (571)270-1893. The examiner can normally be reached on Monday-Friday, 8:30 AM - 5:00 PM, EST. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on (571) 272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3781

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Robert J Hicks/
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Examiner, Art Unit 3781

/Anthony D Stashick/
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